

December 6, 2013

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to the cultivation, use, possession, and sale of marijuana (A.G. File No. 13-0025 Amdt. #1-S).

Background

Federal Law. Federal laws classify marijuana as an illegal substance and provide criminal penalties for various activities relating to its use. These laws are enforced by federal agencies that may act independently or in cooperation with state and local law enforcement agencies.

State Law and Proposition 215. Under current state law, the possession, cultivation, or distribution of marijuana generally is illegal in California. Penalties for marijuana-related activities vary depending on the offense. For example, possession of less than one ounce of marijuana is an infraction punishable by a fine, while selling marijuana is a felony and may result in a jail or prison sentence.

In November 1996, voters approved Proposition 215, which legalized under state law the cultivation and possession of marijuana in California for medical purposes. State law also authorizes cities and counties to regulate the establishment of medical marijuana dispensaries in their jurisdictions. The U.S. Supreme Court ruled in 2005, however, that federal authorities could continue under federal law to prosecute California patients and providers engaged in the cultivation and use of marijuana for medical purposes. Despite having this authority, the current policy of the U.S. Department of Justice (DOJ) is not to prosecute marijuana users and businesses that act in compliance with state and local marijuana laws so long as those laws are written and enforced in a manner that upholds federal priorities. These priorities include ensuring that marijuana is not distributed to minors or diverted from states that have legalized marijuana to those that have not. State and local governments currently collect sales tax on medicinal marijuana sales.

Proposal

This measure changes state law to legalize the possession, cultivation, and sale of marijuana. Despite these changes to state law, activities related to the use of marijuana would continue to be prohibited under federal law.

State Legalization of Marijuana-Related Activities. Under the measure, individuals of any age could legally possess, sell, transport, process, and cultivate marijuana under state law. The measure, however, specifies that such activities (except for medical use) may be prohibited in the future for individuals under the age of 21. As discussed below, the production of specified amounts of marijuana for recreational, dietary (such as in non-psychoactive foods) and medical purposes would be subject to regulation by the state and local governments.

Although the measure would generally legalize marijuana, it would remain unlawful for individuals to (1) operate a motor vehicle while under the impairment of marijuana, (2) divert marijuana to another state, and (3) provide marijuana to individuals under the age of 21. In addition, the smoking of marijuana in public places would be subject to the same restrictions that apply to the smoking of tobacco. The measure also states that state and local governments shall be prohibited from enforcing federal prohibitions on marijuana, including providing the federal government with information obtained in regulating the marijuana-related activities authorized under the measure. Moreover, the measure states that no individual can be denied a license or permit (such as a professional license) for engaging in lawful marijuana-related activities.

Regulation of Commercial Marijuana Activities. This measure establishes the Cannabis Control Commission (CCC) to regulate the commercial cultivation, distribution, and sales of marijuana. Under the measure, the cultivation of 100 square feet or less of marijuana grown indoors and 100 square feet or less of marijuana grown outdoors, per acre, per adult, for noncommercial use, would be exempt from regulation. Individuals or organizations cultivating greater amounts of marijuana, or engaging in commercial cultivation, processing, transportation, distribution, or sales of marijuana would be required to pay a fee and obtain a certificate from the commission. Under the measure, existing medical marijuana dispensaries that are at least 600 feet from K-12 schools would be exempt from any enforcement actions with respect to local zoning ordinances as well as any new fees or regulations imposed by the measure or by the commission.

The measure also authorizes the CCC to monitor compliance with its regulations; investigate suspected violations; and restrict, suspend, or revoke business certificates of violators. The measure allows any person who is denied a marijuana business certificate to appeal to a state trial court for judicial review. In addition, any business whose certificate is limited, suspended, or revoked could appeal directly to the Sacramento County Superior Court for judicial review. The measure also gives the commission the authority to require local law enforcement agencies to provide to the commission any materials related to an investigation or prosecution of an individual for a violation of any law related to marijuana.

Taxation of Commercial Marijuana Activities. The measure states that existing state and local sales and use taxes shall be applied to marijuana sold for recreational use. However, the measure states that marijuana sold for medical or dietary purposes shall be exempt from such

taxes. Revenues collected from recreational marijuana sales tax revenues would be deposited in a new special fund, the Public Benefit Fund. (We note that the State Constitution currently directs a portion of sales tax revenue for specific purposes, such as local public safety programs. Thus, the actual percentage of sales tax revenues from recreational marijuana that could be legally deposited to the Public Benefit Fund may need to be determined by the courts.) Of the revenues deposited in the Public Benefit Fund, 20 percent would be allocated annually to fund:

(1) education; (2) health care; (3) police, sheriff, and fire services; and (4) drug abuse education and treatment. The measure authorizes the Legislature and Governor to determine the specific recipients but requires that at least 67 percent of the amount allocated to each of these areas be appropriated to counties, cities, or special districts. The remaining 20 percent, or \$7.5 million, whichever is less, would support the operations of CCC. Any remaining funds would be transferred to the state General Fund.

Local Zoning Restrictions for Marijuana Businesses. Under the measure, the establishment of storefront marijuana businesses is prohibited within 100 feet of any residential zone or within 600 feet of any K-12 school, public park, public library, or licensed day care center. In addition, the measure allows governments in small cities and counties (fewer than 10,000 residents) to permanently ban storefront marijuana businesses. Governments in medium-sized cities and counties (between 10,000 and 25,000 residents) could permanently limit the number of storefront marijuana businesses to one. Governments in large cities and counties (more than 25,000 residents) could permanently limit the number of storefront marijuana businesses to one per 25,000 residents. Governments in medium-sized and large cities and counties could completely ban such businesses for up to 12 months, but would require voter approval to establish a permanent ban.

Authorization of Criminal and Civil Penalties. Under the measure, an individual who violates any provision of the measure or any regulation established by CCC would be subject to civil fines of up to \$10,000 per violation, with repeated violations punishable as misdemeanor crimes. In addition, the measure states that it would be a misdemeanor crime punishable by up to one year in jail, a \$10,000 fine, or both, for any CCC commissioner or employee to disclose information obtained in the performance of their duties to unauthorized individuals. It would also be a misdemeanor for an individual over the age of 21 to provide marijuana to an individual under the age of 21 for nonmedicinal purposes. The measure also states that punishments that currently exist for violations of regulations related to the sales of alcohol (such as those related to permissible hours of sale) shall also apply to violations of similar regulations pertaining to the sale of marijuana that are adopted by the commission.

In addition, the measure states that the following activities are crimes punishable as either a misdemeanor or felony, or by a requirement to attend a marijuana education diversion program that each county would be required to establish: (1) the diversion of marijuana to other states; (2) marijuana-related activity used as a cover for the trafficking of illegal drugs or other illegal activity; (3) the use of violence, coercion, or duress in the unlawful cultivation or distribution of marijuana; and (4) gross pollution or environmental destruction caused by unlawful cultivation of marijuana. In addition, individuals who exceed the limitation on the cultivation of marijuana for noncommercial use could be punished by a requirement to attend a county diversion program. Such individuals would also be subject to a fine of up to \$50 per square foot over the limit.

Fiscal Effects

The provisions of this measure would affect both costs and revenues for state and local governments. The magnitude of these effects would depend upon (1) the extent to which the U.S. DOJ exercises its discretion to enforce federal prohibitions on marijuana activities otherwise permitted by this measure and (2) how the commission chooses to regulate the commercial production and sale of marijuana. Thus, the potential revenue and expenditure impacts of this measure described below are subject to considerable uncertainty.

Reduction in Various Criminal Justice Costs. The measure would result in reduced costs to the state and local governments by reducing the number of marijuana offenders incarcerated in state prisons and county jails, as well as the number placed under community supervision (such as county probation). In addition, the measure would result in a reduction in state and local costs for the enforcement of marijuana-related offenses and the handling of related criminal cases in the state court system. In total, these reduced costs could be in the low hundreds of millions of dollars annually.

Other Fiscal Effects on State and Local Programs. The measure could also have fiscal effects on various other state and local programs. For example, the measure could result in an increase in the consumption of marijuana, potentially resulting in an unknown increase in the number of individuals seeking publicly funded substance abuse treatment and other medical services. This measure could also potentially reduce both the costs and offsetting revenues of the state's Medical Marijuana Program, a patient registry that identifies those individuals eligible under state law to legally purchase and consume marijuana for medical purposes. In addition, the measure could result in costs for the state to regulate the commercial production and sale of marijuana. Depending on how, and to what extent, CCC chooses to implement such regulations, these costs could potentially be up to the low tens of millions of dollars annually. However, these costs could be largely or entirely offset by registration fees required by the measure to be levied on marijuana-related businesses, as well as revenues from sales tax imposed on marijuana sales.

In addition, the measure could result in costs to state trial courts from hearing appeals from marijuana businesses aggrieved by the commission's decisions. The magnitude of these costs are unknown as they would depend on the number of appeals filed in response to commission decisions. The measure could also result in costs to local law enforcement agencies related to providing the commission with materials related to marijuana investigations or prosecutions, depending on the amount and type of information the commission requests from local law enforcement. Moreover, the measure would result in costs to counties to create and administer marijuana diversion programs. However, these costs would largely be offset by fees charged to program participants.

Effects on State and Local Revenues. State and local governments could receive additional sales tax revenues from recreational marijuana sales permitted under this measure. However, since the measure prohibits taxation on medical and dietary marijuana products, these revenues would be partially offset by the loss of sales tax currently collected on medical and dietary marijuana sales. As noted earlier, a portion of the revenues derived from sales taxes would be deposited in the Public Benefit Fund to support various program areas.

In addition, the measure could result in an increase in taxable economic activity in the state, as businesses and individuals producing and selling marijuana would pay personal income and corporation taxes. Moreover, the measure could increase economic activity in the state to the extent that out-of-state consumers redirect spending into the state. The magnitude of the net increase in economic activity is unknown and would depend considerably on the extent to which the federal government enforces marijuana laws in California. In total, our best estimate is that the state and local governments could eventually collect net additional revenues in the low hundreds of millions of dollars annually.

Reduction of Existing Fine and Asset Forfeiture Revenues. The measure could reduce state and local revenues from the collection of the fines established in current law for marijuana offenses and the assets that are forfeited in some criminal marijuana cases. We estimate that these revenues could amount to the low tens of millions of dollars annually. This could be somewhat offset, however, by additional fine revenue generated from the new penalties created by the measure (such as for violating regulations established by CCC).

Summary of Fiscal Effects. We estimate that this measure would have the following major fiscal effects, which could vary considerably depending on (1) future actions by the federal government to enforce federal marijuana laws and (2) how the state chooses to regulate the commercial production and sale of marijuana.

- Reduced costs in the low hundreds of millions of dollars annually to state and local governments related to enforcing certain marijuana-related offenses, handling the related criminal cases in the court system, and incarcerating and supervising certain marijuana offenders.
- Potential net additional tax revenues in the low hundreds of millions of dollars annually related to the production and sale of marijuana, a portion of which is required to be spent on education, health care, public safety, drug abuse education and treatment, and the regulation of commercial marijuana activities.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance